tractual agreement to perform the covenants. *Springer* v. *DeWolf* (1902) 194 Ill. 218, 62 N. E. 542. This is analogous to the general rule in mortgages that a conveyance subject to an outstanding mortgage does not impose on the grantee a personal liability to the mortgagee, while an assumption of the mortgage does entail such a liability. *Shepherd* v. *May* (1885) 115 U. S. 505, 6 Sup. Ct. 119; *Lock* v. *Homer* (1881) 131 Mass. 93. The principal case, therefore, is not within the class of cases where a recovery of rent accruing after reassignment is properly allowed. Though this view may work a hardship to the lessor in a case where the assignee reassigns to an irresponsible person, it is in accord with the generally accepted policy favoring alienability of property. See *Consolidated Coal Co.* v. *Peers, supra,* 373. The instant case, therefore, seems unsound.

LANDLORD AND TENANT—CO-TENANT—LIABILITY OF SURETY ON LEASE RENEWAL.—The plaintiff in 1909 leased to the defendants for five years with an option to renew for a like term. The defendant S signed the lease solely as surety, as the plaintiff knew. In 1914, the defendant M continued in possession, no notice being given by any party. In 1918, M made an agreement with one C, to which the plaintiff was a party, whereby C was to pay the rent including that in arrears. During the entire period, S derived no enjoyment from the premises. In an action for rent for the renewal term, 1914-1919, M defaulted. As to S, *held,* not liable. *Foster* v. *Mulcahey and Stewart* (4th Dept. 1921) 196 App. Div. 814.

Regarding S as a co-tenant, the court correctly decided that one tenant cannot bind his co-tenant for the new term by exercising an option of renewal. *Tweedie* v. *Olson H. & F. Co.* (1905) 96 Minn. 238, 104 N. W. 895. S, however, was merely a surety, as known by the plaintiff. *Cf. Brewer* v. *Thorp* (1859) 35 Ala. 9. In considering a surety's liability for rent after an option is exercised, a distinction is made between an option to continue and an option to renew. Where the option is to continue the lease, or remain in possession, the term is regarded as a continuous one and the surety is liable while it lasts. *Coe* v. *Vogdes* (1872) 71 Pa. St. 383; *Heffron* v. *Treber* (1907) 21 S. Dak. 194, 110 N. W. 781; *Decker* v. *Gaylord* (N. Y. 1876) 8 Hun 110; *Deblois* v. *Earle* (1861) 7 R. I. 26; see 2 McAdam, *Landlord and Tenant* (3d ed. 1900) 874; *contra, Brewer* v. *Thorp, supra.* But where the option is to renew, the surety is not liable for the renewal period. *Kanouse* v. *Wise* (1908) 76 N. J. L. 423, 69 Atl. 1017; *Knowles* v. *Cuddeback* (N. Y. 1880) 19 Hun 590. S's liability ended therefore in 1914. In view of the strict regard for a surety's liability the distinction is valid. When the option is to continue, in theory the whole term is one resulting from the original agreement to which the surety was a party. *Cf. Carhart* v. *White M. & T. Co.* (1909) 122 Tenn. 455, 123 S. W. 747. But where the option is to renew, technically a new agreement is made, resulting in a new term to which the surety never became a party. See *ibid.* 461. Assuming S was bound by the renewal, the agreement between M and C discharged him for rent due after 1918. *Stern* v. *Sawyer* (1905) 78 Vt. 5, 61 Atl. 36; *Kingsbury* v. *Westfall* (1875) 61 N. Y. 356. Whether the rent sued for was that due before 1918 or after is not stated. But under either circumstance, S was not liable.

MASTER AND SERVANT—FALSE IMPRISONMENT BY STORE MANAGER.—The manager of the defendant's store, suspecting the plaintiff of having purloined an article, wrongfully detained her, threatened to search her and sent for the police. On appeal from a judgment for the plaintiff, *held,* one judge dissenting, judgment reversed and complaint dismissed. *Homeyer* v. *Yaverbaum* (2d Dept. 1921) 197 App. Div. 184, 188 N. Y. Supp. 849.

A master is liable for the express or impliedly authorized acts of his servants.

Rounds v. *Delaware, L. & W. R. R.* (1876) 64 N. Y. 129. A servant in charge of an establishment is impliedly authorized to detain persons who steal the master's property in his charge. *Staples* v. *Schmid* (1893) 18 R. I. 224, 26 Atl. 193. But, if the servant arrests one, not for the purpose of protecting his master's property, but to punish a suspected criminal attempt on that property, the master is not liable. *Allen* v. *London & S. W. Ry.* (1870) 23 L. T. R. (N. S.) 612. Likewise if under all circumstances the act of the servant is unlawful the master is not liable. *Poulton* v. *London & S. W. Ry.* (1867) 17 L. T. R. (N. S.) 11; *Muller* v. *Hillenbrand* (1920) 227 N. Y. 448, 125 N. E. 808; *contra, Compher* v. *Telephone Co.* (1908) 127 Mo. App. 553, 106 S. W. 536. If, however, under the supposed circumstances the act of the servant had been lawful, the master is liable. *Staples* v. *Schmid, supra; Knowles* v. *Bullene & Co.* (1897) 71 Mo. App. 341; see *Cobb* v. *Simon* (1903) 119 Wis. 597, 602, 97 N. W. 276. Inconsistent with this sensible rule stands *Mali* v. *Lord* (1868) 39 N. Y. 381, which in effect illogically extends the rule of the *Poulton* case to instances where, under some circumstances, the act of the servant would be legal. But a master is liable when his servant uses excessive force in performing a duty otherwise lawful. *Hoffman* v. *New York Cent. & Hud. Riv. R. R.* (1881) 87 N. Y. 25; *McKernan* v. *Manhattan Ry.* (N. Y. 1887) 22 J. & S. 354. The same is true when a servant, in doing an act otherwise legal, fails to observe a statutory duty. *Ives* v. *Welden* (1901) 114 Iowa 476, 87 N. W. 408; *Railway Co.* v. *Ryan* (1892) 56 Ark. 245, 19 S. W. 839. Thus it will be seen that even in New York the rule of the *Mali* case, followed in the instant case, has no application beyond its particular facts. And it has been severely criticized as unsound. See *Staples* v. *Schmid, supra,* 230; *Knowles* v. *Bullene & Co.,* supra, 350.

MORTGAGES—EQUITABLE—PRIORITY OVER SUBSEQUENT EQUITABLE LIEN.—In an action to foreclose a mortgage on a railroad bridge, held in trust for bona fide bondholders and executed and recorded prior to the construction of the bridge, the defendant claimed an equitable lien for labor and material in constructing the bridge. *Held,* the mortgage had priority. *Territorial Trust and Surety Co.* v. *Missouri Valley Bridge & Iron Co.* (Okla. 1921) 200 Pac. 863.

The ground of the equitable lien is not set forth. The authorities support the instant case on the ground that the mortgage being prior in time the lienor could not get rights already given to the mortgagee, regardless of whether the lien arose by operation of law, *Porter* v. *Pittsburg Bessemer Steel Co.* (1887) 120 U. S. 649, 7 Sup. Ct. 741; see *Trocon* v. *Scott City Northern R. R.* (1914) 91 Kan. 887, 893, 139 Pac. 357; or by agreement. *Porter* v. *Pittsburg Bessemer Steel Co.* (1887) 122 U. S. 267, 7 Sup. Ct. 1206; *Dunham* v. *Cincinnati, Peru, etc. Ry.* (1863) 68 U. S. 254; but *cf. Trocon* v. *Scott City Northern R. R., supra.* Where there is an agreement for a lien such a result seems unjust and unwise. For a contractor whose work and materials render valuable the mortgagee's paper security should be allowed to stipulate for priority; especially since, despite the prior execution, the mortgage attaches to the property simultaneously with the contractor's lien. *Cf. Farmers' Loan & Trust Co.* v. *Kansas City W. & N. W. R. R.* (C. C. A. 1892) 53 Fed. 182. The courts in giving priority to a lien for compensation for property taken by eminent domain take a position similar to this, but regard it as an exception. *Commonwealth Trust Co.* v. *Scott City Northern R. R.* (1914) 93 Kan. 340, 144 Pac. 210; *cf. Penn. Mutual Life Insurace Co.* v. *Heiss* (1892) 141 Ill. 35, 31 N. E. 138. Likewise, in an analogous situation where mortgaged chattels are affixed to realty already mortgaged, most courts, unless from the nature of the chattel it is impracticable, give priority to the chattel mortgagee. *Tifft* v. *Horton* (1873) 53 N. Y. 377; *Campbell* v. *Roddy* (1888) 44 N. J. Eq. 244, 14 Atl. 279;